FILED
UNITED STATES DISTRICT COURT
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CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

JOSEPH S. COEY,

Plaintiff,

v.

No. CIV CIV-02-0007 LFG/DJS

ALFRED PARKER, TERRY LAUDICK,
JOE CHRISTIAN, NEW MEXICO EDUCATOR'S
FEDERAL CREDIT UNION,

Defendant.

NOTICE OF REMOVAL

Defendant New Mexico Educators Federal Credit Union ("NMEFCU") (misnamed as "New Mexico Educator's Federal Credit Union" in the lawsuit below) respectfully shows the Court:

1. A civil action has been commenced and is now pending in the Second Judicial District Court, Bernalillo County, New Mexico, as Cause No. CV-2000-01925 ("Cause No. CV-2000-01925"), where Joseph Coey is the Plaintiff and Alfred Parker, Terry Laudick, Joe Christian, and NMEFCU are the Defendants.

2. The lawsuit is captioned: "Joseph S. Coey, Plaintiff, v. Alfred Parker, Terry Laudick, Joe Christian, New Mexico Educator's (sic) Federal Credit Union, Defendant (sic). " Plaintiff's Second Amended Complaint for Interference with Contractual Relations and Prospective Economic Advantage, Conspiracy and Breach of Contract ("Second Amended Complaint") seeks recovery of "loss of retirement benefits and other employment benefits" from NMEFCU under

a breach of contract theory. NMEFCU was added as a Defendant to this litigation for the first time upon the filing of Plaintiff's Second Amended Complaint on or about December 13, 2001.

3. Copies of all process and pleadings served upon NMEFCU and/or filed in Cause No. CV-2000-01925 are attached hereto as Exhibit A and made a part hereof. Pursuant to Local Rule 81.1(a), Exhibit A will be supplemented as appropriate.

4. Upon information and belief, Plaintiff is a resident of New Mexico. Defendant NMEFCU is a federally chartered credit union which is principally located in Albuquerque, New Mexico.

5. Removal is appropriate under 28 U.S.C. § 1331 because Plaintiff's action arises under the laws of the United States. Under the "complete preemption" doctrine, a complaint alleging only a state law cause of action may yet be removed to federal court if the state cause of action falls within the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461, § 1132(a). *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987). Though Plaintiff's Second Amended Complaint simply asserts a breach of contract against Defendant NMEFCU, it further alleges that Plaintiff was employed for the past 28 years by Defendant NMEFCU, that Defendant's termination of Plaintiff's employment caused him to lose benefits, including retirement income, and that Defendant's termination of Plaintiff's employment and benefits was by improper means and with improper motive. On those grounds, Plaintiff's Second Amended Complaint seeks to recover "retirement benefits" from his former employer. The New Mexico Educators Federal Credit Union Defined Benefit Pension Plan ("Plan") is an ERISA-covered plan for retirement benefits. *See* Affidavit of Sandra Chavez attached as Exhibit B, including a copy of the New Mexico Educators Federal Credit Union Defined Benefit Pension

Plan, attached thereto as Exhibit 1. Plaintiff's Second Amended Complaint thus asserts a claim remediable under ERISA § 502(a), 29 U.S.C. § 1132(a), and calls for interpretation of a pension plan governed by that federal law. Therefore, ERISA § 514(a), 29 U.S.C. § 1144, preempts Plaintiff's Second Amended Complaint in Cause No. CV-2001-1658. This Court thus has original jurisdiction over this action under 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the remaining parties and claims under 28 U.S.C. § 1367. Plaintiff's claims against individual Defendants Alfred Parker, Terry Laudick and Joe Christian derive from a common nucleus of operative fact with Plaintiff's ERISA-preempted claims against NMEFCU, and are so related to such claims that they form part of the same case or controversy under Article III of the Constitution of the United States. Pursuant to 28 U.S.C. §§ 1441 and 1446, this action may be removed to this Court.

6. NMEFCU (who was not identified as a party defendant in the first two versions of Plaintiff's complaint) was served with a copy of the Summons and Second Amended Complaint on or about December 14, 2001. Thirty (30) days have not elapsed since NMEFCU received a copy of the Complaint through service or otherwise, and this Notice of Removal is timely filed.

7. All of the Defendants, individually and through counsel of record, consent to and join in this removal. *See* attached Exhibits C, D and E and Verification by Barbara G. Stephenson, Attorney for Defendants NMEFCU, Alfred Parker, Terry Laudick and Joe Christian.

8. NMEFCU, immediately upon filing this Notice, has given written notice thereof to Plaintiff as required by 28 U.S.C. § 1446(d) and has filed a copy of said Notice with the Clerk of the Court from which this action was removed.

WHEREFORE, New Mexico Educators Federal Credit Union hereby requests the Court to remove Cause No. CV-2000-01925 from the Second Judicial District Court, County of Bernalillo, State of New Mexico, into this Court for trial and determination.

GILKEY & STEPHENSON, P.A.

By: Barbara Stephenson
Duane C. Gilkey
Barbara G. Stephenson
Trent A. Howell
Attorneys for Defendants NMEFCU, Alfred Parker, Terry Laudick and Joe Christian
P.O. Drawer 25566
Albuquerque, NM 87125
(505) 242-4466
(505) 242-3145 (fax)

CERTIFICATE OF MAILING

It is hereby certified that a true and correct copy of the foregoing Notice of Removal was delivered by hand to Plaintiff, in care of his attorneys, J. Edward Hollington, J. Edward Hollington & Associates, P.A., 708 Marquette Ave. NW, Albuquerque, NM 87102, on the 3rd day of January, 2002.

Barbara Stephenson
Barbara G. Stephenson

VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

BARBARA G. STEPHENSON, first being duly sworn, states upon oath that she is an attorney for Defendants New Mexico Educators Federal Credit Union, Alfred Parker, Terry Laudick and Joe Christian, and makes this verification and consent to removal on behalf of each Defendant; that as such attorney she has prepared the above and foregoing Notice of Removal; that she has read the same, knows the contents thereof, and that the matters and things set forth therein are true of her knowledge, save where the same are or must of necessity be set forth upon information and belief, and as to those allegations, she verily believes the same to be true.

Barbara G. Stephenson
Barbara G. Stephenson

SUBSCRIBED AND SWORN to before me this 3rd day of January, 2002, by Barbara G. Stephenson.

Diane M. Reinbold
Notary Public

My commission expires:

3/11/2004

OFFICIAL SEAL
Diane M. Reinbold
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 3/11/2004

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

FILED
SECOND JUDICIAL DISTRICT
01 DEC 13 PM 2:30
PATRICK MAREZ

No. CV-2000-01925

JOSEPH S. COEY,

Plaintiff,

vs.

ALFRED PARKER, TERRY LAUDICK, JOE CHRISTIAN, NEW MEXICO EDUCATOR'S FEDERAL CREDIT UNION,

Defendant.

SECOND AMENDED COMPLAINT FOR INTERFERENCE WITH CONTRACTUAL RELATIONS AND PROSPECTIVE ECONOMIC ADVANTAGE, CONSPIRACY AND BREACH OF CONTRACT

COMES NOW Plaintiff, Joseph S. Coey, hereinafter "Mr. Coey", by and through his attorneys of record, J. Edward Hollington, J. Edward Hollington & Associates, P.A., and for his amended complaint against the Defendants, states:

I. JURISDICTION AND VENUE

1. Mr. Coey is a resident of Albuquerque, Bernalillo County, New Mexico.

2. Defendants Alfred Parker, hereinafter "Parker", Terry Laudick, hereinafter "Laudick", and Joe Christian, hereinafter "Christian", are residents of Albuquerque, Bernalillo County, New Mexico.

3. Defendant New Mexico Educator's Federal Credit Union (hereinafter 0"NMEFCU") is a federally chartered credit union which is principally located in Albuquerque, Bernalillo County, New Mexico.

4. All transactions and occurrences giving rise to this complaint took0 place in Albuquerque, Bernalillo County, New Mexico.

STATEMENT OF FACTS

5. Mr. Coey was appointed Manager of New Mexico Educators Federal Credit Union ("NMEFCU") f/k/a Albuquerque Public School Federal Credit Union on July 1, 1980 pursuant to a written contract. He had served in that position since 1973.

6. Subsequently, Mr. Coey's title was changed to that of President and CEO of NMEFCU.

7. Mr. Coey was later appointed an officer of NMEFCU.

8. Mr. Coey successfully served as President and CEO until January 12, 2000.

9. During Mr. Coey's tenure as President and CEO of NMEFCU, the institution grew from a credit union of about $3,000,000.00 in assets to a credit union with over $470,000,000.00 in assets.

10. NMEFCU today has fourteen locations and several hundred employees.

11. Under the leadership of Mr. Coey, NMEFCU has grown to be one of New Mexico's largest and most successful credit unions.

12. NMEFCU is governed by a Board of Directors pursuant to NMEFCU's By-laws and Federal Credit Union Laws and Regulations.

13. Mr. Parker is not a member of the Board of Directors of NMEFCU.

14. Mr. Parker is an advisor to the Board of Directors. He does not have a contract with, nor is he employed by, NMEFCU and he receives no compensation for his services as an advisor.

15. As an advisor, Parker does not usually involve himself in personnel matters, and does not have authority over personnel matters.

16. Mr. Parker is not an expert in personnel management.

17. Prior to January 12, 2000, Defendant Terry Laudick, was Senior Vice-President, with NMEFCU.

18. At all material times to this amended complaint, Defendant Joe Christian was a vice-president with NMEFCU.

19. On or about October, 1999, Defendant Terry Laudick, expressed interest in replacing Joseph Coey as CEO and President of NMEFCU.

20. During November and December of 1999, Defendants Parker, and Laudick held a series of secret meetings for the purpose of developing plans to have Plaintiff Joseph Coey terminated so Defendant Laudick could gain appointment as CEO and President of NMEFCU.

21. During December of 1999, Defendants Laudick and Christian held secret meetings with Board members Ramon Renteria and Martin Serna for the purpose of persuading the Board members to fire Plaintiff.

22. On or about December 17, 1999, Defendants Laudick and Christian, had a secret meeting with the Board of Directors for the purpose of persuading the Board to fire the Plaintiff.

23. Prior to January 12, 2000, Defendants actively encouraged the Board of Directors to terminate the employment of Mr. Coey.

24. The Defendants, individually and in concert, misrepresented facts and made untrue, negative allegations about Mr. Coey's work performance as CEO and President.

25. As a direct result of Defendants' acts, the Board of Directors, on January 12,

2000, terminated the employment of Joseph Coey without notice, or explanation and gave him no opportunity to answer any of the charges the Defendants had made against him.

26. Shortly after terminating the employment of Plaintiff, Defendants Parker, and Christian urged the Board of Directors to appoint Terry Laudick CEO.

27. The Board of Directors appointed Terry Laudick CEO and President.

28. The Board of Directors of NMEFCU had never taken disciplinary action against Mr. Coey until Defendants began the campaign to get Mr. Coey fired.

29. Mr. Parker does not have voting rights as an advisor to the Board of Directors.

30. The Board of Directors agreed that Joseph Coey would be employed as CEO and President of the Credit Union until his retirement. The Board of Directors had established written criteria for evaluating the performance of Plaintiff Joseph Coey and assured Mr. Coey that as long as he performed according to the criteria established by the Board, he would remain employed as CEO. Plaintiff Joseph Coey informed the Board he intended to continue to serve as CEO and President until his retirement.

31. On January 12, 2000, Mr. Coey was handed a letter of termination as President and CEO. The Board of Directors stated no cause for terminating his employment.

32. Based on Mr. Coey's performance, the Board of Directors in March of 1999 approved a raise of $30,000.00.

33. Mr. Coey's annual salary and compensation at the time of the termination was $186,000.00, plus benefits.

34. Defendants interfered with Mr. Coey's job by improper means and motive.

35. Mr. Coey has lost income, past and future, benefits, including retirement income,

and other compensatory damages to be proven at trial.

36. The Defendants' actions were done in a wanton, willful and malicious manner with the intended purpose of causing harm to Mr. Coey.

COUNT I: INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

37. Plaintiff hereby incorporates all allegations contained in the foregoing paragraphs 1 through 36 above as though the same are fully set forth herein.

38. Mr. Coey had written and oral contractual rights with NMEFCU. Defendants knew of those contractual rights.

39. Defendants interfered with Mr. Coey's contractual rights by improper means and improper motive.

40. As a direct and proximate result of Defendants' interference with Mr. Coey's contractual rights, Mr. Coey's position as President and CEO was terminated.

41. Mr. Coey has suffered damages, including pecuniary and compensatory losses.

42. Defendants' actions were wanton, willful and malicious and Mr. Coey is entitled to punitive damages.

WHEREFORE, Plaintiff prays this Court to enter judgment against the Defendants, jointly and severally, and award Plaintiff damages for his pecuniary, losses, including but not limited to, loss of income, past and future, loss of retirement benefits and other employment benefits, damages for emotional distress, loss of business reputation, punitive damages, pre-judgment and post-judgment interest and such other and further relief as the Court deems just and appropriate.

COUNT II: INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

43. Plaintiff hereby incorporates all allegations contained in the foregoing paragraphs 1 through 42 above as though the same are fully set forth herein.

44. Mr. Coey had written and oral contract agreements with NMEFCU. The Board of Directors usually made decisions about Mr. Coey's employment without reference to his written contract. The Board of Directors agreed to retain Mr. Coey as CEO and President until his retirement.

45. Mr. Coey successfully performed his duties and responsibilities as President and CEO of NMEFCU and was led to believe the Board of Directors would retain him as CEO and President until his retirement.

46. The Defendants knew the Board of Directors intended to retain Mr. Coey as President and CEO until his retirement.

47. Defendants knew and understood that the Board had given no indication to Mr. Coey that his term as CEO and President would not extend until the date of his retirement.

48. Defendants interfered with Mr. Coey's prospective economic advantages by interfering with his continued employment.

49. Defendants' interference was done by improper means and with improper motive.

50. As a direct and proximate result of Defendants' wrongful interference, Mr. Coey's contract was terminated.

51. Mr. Coey has suffered damages in the form of pecuniary and compensatory losses.

52. Defendants' actions were wanton, willful and malicious and Mr. Coey is entitled to punitive damages.

WHEREFORE, Plaintiff prays this Court to enter judgment against the Defendants, jointly and severally, and award Plaintiff damages for his pecuniary, losses, including but not limited to, loss of income, past and future, loss of retirement benefits and other employment benefits, damages for emotional distress, loss of business reputation, punitive damages, pre-judgment and post-judgment interest and such other and further relief as the Court deems just and appropriate.

COUNT III: CONSPIRACY

53. Plaintiff hereby incorporates all allegations contained in the foregoing paragraphs 1 through 52 above as though the same are fully set forth herein.

54. Defendants entered into a conspiracy involving schemes and plans to interfere with Plaintiff's contractual rights and prospective economic advantage with his employment as President and CEO.

55. Defendants made false and misleading statements about Mr. Coey for the purpose of interfering with his contract and prospective economic advantage.

56. The Defendants played an active and a substantial part in the termination of Mr. Coey's employment.

57. As a result of Defendants' actions, Mr. Coey, suffered damages and losses.

58. The Defendants' acts were wrongful and done pursuant to conspiracy.

59. The Defendants' actions were done without justification or privilege.

60. Defendants' acts were done in a willful, wanton and malicious manner.

WHEREFORE, Plaintiff respectively requests this Court to enter judgment against the Defendants jointly and severally, and award Plaintiff damages for his pecuniary, losses, including but not limited to, loss of income, past and future, loss of retirement benefits and other employment benefits, damages for emotional distress, loss of business reputation, punitive damages, pre-judgment and post-judgment interest and such other and further relief as the Court deems just and appropriate.

COUNT IV - BREACH OF CONTRACT

61. Plaintiff hereby incorporates all allegations contained in the foregoing paragraphs 1 through 60 above as though the same are fully set forth herein.

62. The Board of Directors of NMEFCU operates and carries out its functions pursuant to National Credit Union Administration ("NCUA"), Federal Credit Union Bylaws.

63. The Board of Directors of NMEFCU follows the CUNA Credit Union Board of Directors' Handbook regarding Board CEO relationships.

64. In 1998, the Board of Directors adopted CEO evaluation plan for the purposes of establishing goals and objectives and to evaluate performance of the CEO.

65. The Board of Directors submitted the proposed CEO evaluation plan to Plaintiff in 1998 for review and comment. The Board and Plaintiff Joseph Coey agreed that his performance as CEO would be evaluated based on this objective criteria and as long as he performed satisfactorily pursuant to the established criteria, he would remain CEO.

66. In March of 1999, the Board of Directors evaluated Mr. Coey's job performance

utilizing the CEO evaluation plan and concluded that Mr. Coey had more than satisfactorily met nine out of the ten criteria in the CEO evaluation.

67. The Board, based on that evaluation, gave Mr. Coey a raise increasing his salary by $30,000 a year.

68. Pursuant to the CUNA Credit Union Board of Directors' Handbook, any decisions regarding the termination of the CEO should be based on criteria and policies previously approved by the Board.

69. Prior to any action to terminate, the CEO should have an opportunity to present his defense and be given an opportunity to correct any deficiencies claimed by the Board.

70. The Board of Directors agreed that any decisions about CEO's job performance would be based on objective criteria adopted by the Board.

71. The Board agreed that before any decisions were made to terminate the CEO's employment, such decision would be made based on the criteria adopted by the Board and the CEO would be provided an opportunity to present his defenses and the Board would provide an opportunity for the CEO to correct any deficiencies.

72. The above procedures, policies and practices constitutes an implied agreement which created a reasonable expectation on the part of the Plaintiff that as long as his performance met the standards established by the Board, he would remain employed as CEO. Further, the implied agreements by the Board created a reasonable expectation on the part of the Plaintiff that before any action to terminate his employment, the Board would provide him an opportunity to present his defenses and he would also be provided an opportunity to correct any deficiencies.

73. The Board violated these implied agreements when it unilaterally, without notice

and without cause, abruptly terminated Mr. Coey's employment on January 12, 2000.

74. The Board of Directors' conduct constitutes a violation of the implied Covenant of Good Faith and Fair Dealing.

WHEREFORE, Plaintiff respectfully requests the Court enter Judgment against the Defendant New Mexico Educator's Federal Credit Union (NMEFCU), and award Plaintiff pecuniary losses, including but not limited to, loss of income, past and future, loss of retirement benefits and other employment benefits, pre-judgment, post-judgment interest, costs and such other and further relief as the Court deems just and appropriate.

Respectfully submitted

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

By______________________________

J. Edward Hollington
Attorney for Plaintiff
708 Marquette Avenue N.W.
Albuquerque, New Mexico 87102-2035
(505) 843-9171

I hereby certify that a true and correct copy of the foregoing pleading was mailed this 13th day of December, 2001 to:

Barbara Stephenson
Gilkey & Stephenson
500 Marquette, NW, Suite 505
Albuquerque, New Mexico 87102.

____
J. Edward Hollington